bitkom

Position Paper

2023 December

Bitkom Reply to ESMA's second Consultation Paper for MiCA implementation

Questions

Q1: Do you agree with ESMA's assessment of the mandate for sustainability disclosures under MiCA?

While we endorse ESMA's authority to propose sustainability disclosures under MiCAR, we believe that the implementation of the suggested sustainability indicators is currently unattainable.

While it is beneficial to use established frameworks like CSRD and SFDR, they were designed for traditional assets, not crypto-assets. Crypto-assets have unique aspects, such as decentralization and consensus mechanisms, which can lead to different environmental impacts. Therefore, these frameworks cannot be applied to crypto-assets without modifications that consider these unique characteristics. A new set of indicators might be more appropriate for accurately measuring the sustainability impacts of crypto-assets. Furthermore, experience in the market indicates that the necessary data, both in terms of volume and quality, is not presently available and is unlikely to be so in the near future. Consequently, we would appreciate if ESMA could consider a grace period, enabling a clearer understanding on how the data availability and data quality can be ensured to enable the industry to meet the requirements once adequate data becomes accessible.

Q2: In your view, what features of the consensus mechanisms are relevant to assess their sustainability impacts, and what type of information can be obtained in relation to each DLT network node?

Public-permissionless DLTs do not provide information about the DLT network nodes, leading to uncertainty when they are used as a data basis. For instance, network node operators can manipulate software to display IP addresses from a location different from their actual one. Additionally, complications arise with mining pools where clients from various countries aggregate their computational resources.

Focusing on the country of origin does not account for all countries involved in the validation process. The "country approach" is imprecise as nodes cannot be definitively assigned at the country level. Consequently, it remains ambiguous whether the validator node validating a transaction operates on renewable or fossil energy sources.

Temporal factors are also significant. Current studies, like that of the UN University, utilize data from 2020/21 when China contributed a substantial share of global mining/validator nodes through coal-fired power generation. We anticipate this share has significantly decreased due to China's 2021 mining ban. The effects of the ban on the proportion of fossil or renewable energies remain uncertain, further emphasizing the insufficiency of available data.

If the "country approach" is used, investors should be informed about the rudimentary data situation and potential adverse effects. It is possible that a transaction in a specific token in a country was validated using either renewable or fossil energy sources, but this cannot be determined with the current data.

We propose not relying on average emission values at the country level, but instead considering individually determined sustainability indicators in a market-based accounting approach. This would allow CASPs to opt for a more detailed approach if available.

Q3: Do you agree with ESMA's approach to ensure coherence, complementarity, consistency and proportionality?

The outlined approach could lead to a bias in the comparability of sustainability indicators between crypto-assets and financial instruments with crypto-assets as underlying. The proposed approach in the consultation paper targets a network infrastructure, while the reporting obligations under the SFDR focus on the issuer. These divergent approaches could result in a bias in the comparability of the results.

To elucidate, in the case of DLT-based financial instruments, the DLT component of the financial instrument is not considered, even though the technical foundation is identical to a crypto-asset. A similar disparity arises with derivative crypto products.

From an investor protection perspective, the comparability of the results is crucial, as crypto assets are sometimes viewed as an investment alternative to financial

instruments. The comparability of the results could rather be based on the issuer of the crypto-assets.

In instances where no issuer exists or is evident, a qualitative disclosure at an abstract level, such as the functioning of the consensus mechanism, seems more appropriate. However, this is also considered challenging due to the individual infrastructure applied, such as layer-2 technology and omnibus wallets. Therefore, the possibility of considering individually determined sustainability indicators in a market-based accounting approach, where CASPs can opt for a more detailed approach if available, is welcomed.

Q4: Do you agree with ESMA's approach to mitigating challenges related to data availability and reliability? Do you support the use of estimates in case of limited data availability, for example when data is not available for the entirety of a calendar year?

We agree that the requirements should be eased due to the limited availability and reliability of data. However, the use of estimates in situations of low data availability is not recommendable. It is important to note that quantitative disclosures based on estimates can result in an illusion of precision in the disclosure, which could potentially present a misleading or incomplete representation of the energy sources used in the validation process.

This viewpoint is further reinforced by the current lack of reliable data sources, particularly in the case of public-permissionless DLTs. The results to be published can vary significantly among individual market participants, depending on the calculation method and data sources used.

Therefore, in the case of a public-permissionless DLT, we would recommend considering a comprehensible calculation method or logic, even if it deviates from the standard.

Q6: Do you agree with ESMA's description on the practical approach to assessing the sustainability impacts of consensus mechanisms? If not, what alternative approach would you consider suitable to assess these impacts?

We respectfully disagree with the suggested methodology for evaluating the sustainability impact of consensus mechanisms, as detailed in our response to question 4. We posit that drawing a direct line from energy consumption to environmental impact oversimplifies the issue. A more nuanced, multidimensional approach is warranted.

In this regard, we advocate for the consideration of various levels of detail. While this may necessitate the use of assumptions and estimates in the interim, it will allow for a more comprehensive understanding until more precise data becomes available.

The following factors, for instance, should be incorporated into the assessment:

1. What proportion of the energy consumed is derived from renewable sources?
2. Could the energy have been utilized irrespective of whether it was sourced from renewable or non-renewable means?
3. Does the mining occur off-grid?
4. Is there an existing contractual agreement with a power producer for the procurement of peak capacities?

Provided such data is accessible, individual CASPs should be permitted to utilize it. This would afford investors a more accurate depiction of the energy expenditure associated with mining.

Q8: In your view, are the proposed mandatory sustainability indicators conducive to investor awareness? If not, what additional or alternative indicators would you consider relevant?

Rather than focusing on mandatory sustainability indicators, we would highlight the general need of fostering awareness through the provision of freely accessible information, encouraging investors to engage with sustainability issues. It is also important for investors to be aware of the lack of data availability and understand that it is ultimately unclear whether a transaction in a particular crypto-asset is validated by a node powered by renewable or fossil energy.

Q9: Do you consider the proposed optional sustainability indicators fit for purpose? If not, what additional indicators would you consider relevant? Would you agree to making these optional sustainability indicators mandatory in the medium run?

The introduction of optional sustainability indicators, as proposed by ESMA, raises concerns, given that the currently suggested indicators are deemed adequate. The inclusion of further indicators at this juncture seems unnecessary, as they tend to replicate information, exemplified by the overlap between energy mix and carbon intensity. This could potentially dilute the focus on a select set of meaningful sustainability information, overwhelming investors with an array of indicators. However, it is anticipated that the rapid progression of technology will facilitate the display of additional sustainability indicators, backed by a more accurate database, in line with the review planned for three years hence.

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